

Subpart B—Appropriate Use of Technology Investment Agreements

§ 603.200 Contracting officer responsibilities.

Contracting officers may use a TIA only in appropriate situations. To do so, the use of a TIA must be justified based on:

- (a) The nature of the project, as discussed in § 603.205;
- (b) The type of recipient, addressed in § 603.210;
- (c) The recipient's commitment and cost sharing, as described in § 603.215;
- (d) The degree of involvement of the Government program official, as discussed in § 603.220; and
- (e) The contracting officer's judgment that the use of a TIA could benefit the RD&D objectives in ways that likely would not happen if another type of instrument were used (i.e., a contract, grant or cooperative agreement is not feasible or appropriate). Answers to the four questions in § 603.225 form the basis for the contracting officer's judgment.

§ 603.205 Nature of the project.

Judgments relating to the nature of the project include:

- (a) The principal purpose of the project is to carry out a public purpose of support or stimulation of RD&D (i.e., assistance), rather than acquiring goods or services for the benefit of the Government (i.e., acquisition);
- (b) To the maximum extent practicable, the TIA does not support RD&D that duplicates other RD&D being conducted under existing programs carried out by the DOE; and
- (c) The use of a standard contract, grant or cooperative agreement for the project is not feasible or appropriate (see questions in § 603.225).

§ 603.210 Recipients.

(a) A TIA requires one or more for-profit firms, not acting in their capacity as the contractor of a FFRDC, to be involved either in the:

- (1) Performance of the RD&D project; or
- (2) The commercial application of the results.

(i) In those cases where there is only a non-profit performer or a consortium of non-profit performers or non-profit performers and FFRDC contractors, if and as authorized, the performers must have at least a tentative agreement with a specific for-profit partner or partners who plan on being involved in the commercial application of the results.

(ii) In consultation with legal counsel, the contracting officer should review the agreement between the performers and their for-profit partner to ensure that the for-profit partner is committed to being involved in the commercial application of the results.

(b) A TIA may be particularly useful for awards to consortia (a consortium may include one or more for-profit firms, as well as State or local government agencies, institutions of higher education, other nonprofit organizations, or FFRDC contractors, if and as authorized) because:

(1) If multiple performers are participating as a consortium, they may be more equal partners in the performance of the project than usually is the case with a prime recipient and sub-recipients. All of the performers are more likely to be directly involved in developing and revising plans for the RD&D effort, reviewing technical progress, and overseeing financial and other business matters. That feature makes consortia well suited to building new relationships among performers in the technology base, a principal objective for the use of a TIA.

(2) In addition, interactions among the participants within a consortium potentially provide a self-governance mechanism. The potential for additional self-governance is particularly good when a consortium includes multiple for-profit participants that normally are competitors within an industry.

(c) A TIA may be used for carrying out RD&D performed by single firms or multiple performers (e.g., a teaming arrangement) in prime award-subaward relationships. In awarding a TIA in those cases, however, consideration should be given to providing for greater involvement of the program official or a way to increase self-governance (e.g., a prime award with multiple subawards